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JAN 24 2011
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY ______ DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

LINDA ALMONTE,	§	
	§	
Plaintiff,	§	
	§	
VS.	§	**Civil Action No. 5:10-cv-00496-FB**
	§	
JP MORGAN CHASE BANK, N.A.	§	
	§	
Defendant.	§	

AGREED PROTECTIVE ORDER

On this date came on for consideration the Parties' Agreed Motion for Entry of Protective Order and this Court, having been advised of the premises therefore, is of the opinion that the Motion is well taken and should be granted and that the Protective Order should be entered.

Accordingly, it is hereby ORDERED that:

1. All confidential information produced or exchanged in the course of this litigation shall be treated as confidential by the Parties and shall be used solely for the purpose of preparation and trial of this litigation and for no other purpose or litigation whatsoever and shall not be disclosed or made available to any person except in accordance with the terms hereof.

2. Confidential information, as used herein, means any information of any type, kind or character which is designated "Confidential" by either the producing or receiving party, whether it be a document, information contained in a document, information revealed during a deposition, information revealed in interrogatory answers, responses to requests for production, responses to admissions, information in initial disclosures or otherwise. In designating information as "Confidential" and assigning it a confidentiality level, a party will make such

designations only as to that information that it, in good faith, believes requires the protection of this Order.

3. Because of the nature of this case, there are different forms of confidential information involved with each type of confidential information warranting different types or levels of protection. The first level, Level One, as described below, involves documents which contain special information Plaintiff is not entitled to retain such that special procedures need to be taken in order to safeguard information regarding third parties as well as proprietary and confidential information of Defendant. The second level, Level Two, may be viewed by Qualified Persons as further defined herein.

4. Level One Confidential Information. Level One confidential information is information obtained or retained by Plaintiff which she is not entitled to retain and which involves information related to third parties' personal and private information and trade secret and confidential information and processes of Defendant. Pursuant to this Order, Plaintiff and her counsel shall return all originals and copies of all such documents to Defendant's counsel that Defendant's counsel designates as "Level One". Plaintiff's counsel has also represented to the Court and counsel that this has been done. These documents shall be Bates stamped by Defendant's counsel and Defendant's counsel will provide a log to Plaintiff's counsel of the documents, but not the documents. Plaintiff will have no right to maintain or keep any originals or copies of documents in any form or information from documents designated as "Level One". As the litigation proceeds, counsel will establish a procedure through which these documents can be provided to Plaintiff's counsel who will be permitted to review and utilize such documents as may be necessary for preparation for proceedings or in pleadings. A party can challenge a designation under this provision by filing a Motion to Compel and by requesting an in camera

inspection by the Court. All documents and/or logs filed for in camera inspection will be filed under seal. In any Motion to Compel, if any, a party can request the documents to be produced by identifying their Bates stamped numbers from the log provided. If the Court grants the Motion to Compel, all documents produced will be provided to opposing counsel under the Level Two category and be subjected to the restrictions of that category.

5. Level Two Confidential Information. All "Confidential Information" falling outside of the first level of confidential information shall be treated as Level Two "Confidential Information". "Confidential Information" shall be made available only to "Qualified Persons" as defined in Section 7. No other person shall have access to "Confidential Information" without approval of the Court or the agreement of the parties, nor shall any such other person be informed of the substance of such confidential documents by any person having access thereto.

6. "Qualified Persons," as utilized for Level Two Confidential Information.

(a) Plaintiff;

(b) Representatives of Defendant;

(c) Attorneys of record for the parties in this litigation and employees of such attorneys to whom it is necessary that the information be shown for purposes of this litigation;

(d) Actual or potential independent technical experts, or consultants, who have been designated in writing by notice to all counsel prior to any disclosure of "Confidential" information to such persons, and who have signed a document agreeing to be bound by the terms of this protective order.

(e) Stenographic Reporters engaged in proceedings incident to this one;

(f) The Court, its employees and agents, court reporters, and their agents in depositions, hearings, or trial of this action; and

(g) Outside photographers, imaging, copying and similar persons retained by persons listed in (b) above to the extent necessary to assist the parties' counsel in litigation.

(h) If this Court so elects, any other person designated as a Qualified Person by order of this Court, after notice to all parties.

7. Documents produced in this action may be designated Level One or Two by marking each page of the document(s) so designated with a stamp stating such level of designation and that such document(s) is (are) subject to a protective order issued by this Court. In lieu of marking the original of a document, if the original is not produced, the designating party may mark the copies that are produced or exchanged.

9. The signing of and agreement to this Order shall not be deemed a waiver of any parties' right to challenge or object to the restrictions imposed by this Order at a later time.

10. Information disclosed at (a) the deposition of a party or one of its present or former officers, directors, employees, agents or independent experts retained by counsel for the purpose of this litigation, or (b) the deposition of a third party (which information pertains to a party) may be designated by any party as "Confidential" by indicating on the record at the deposition that the testimony is "Confidential" and is subject to the applicable provisions of this Order.

Any party may also designate information disclosed at such deposition as "Confidential" by notifying all of the parties in writing within thirty (30) days of receipt of the transcript, of the specific pages and lines of the transcript, and/or the specific deposition exhibits, that should be treated as "Confidential" thereafter. The receiving Party's counsel shall attach a copy of such written notice(s) to the face of the transcript and each copy thereof in their possession, custody, or control. With the exception of permitting the deponent to review his or her own deposition transcript, all deposition transcripts shall be treated as "Confidential" for a period of thirty (30) days after the receipt of the transcript.

11. (a) Information designated under any Level as "Confidential" shall not be disclosed or made available by the parties to any persons, including governmental entities, except as permitted under the provisions of this Order. This restriction on disclosure includes, but is not limited to, placing "Confidential" information on any web site, blog, home page, financial page, bulletin boards, social media site, or any similar matter.

(b) Copies of any Confidential Information provided to a receiving party shall be maintained in the offices of counsel for the receiving party. Any documents produced in this litigation, regardless of classification, which are provided to Qualified Persons as defined by above, shall be maintained only at the office of counsel for each party and only working copies shall be made of any such documents. Copies of documents produced under this Protective Order may be made, or exhibits prepared by, independent copy services, printers or illustrators for the purpose of this litigation.

12. Documents previously produced shall be retroactively designated by notice in writing of the identity of each document by Bates number within thirty (30) days of the entry of this order. Documents unintentionally produced without designation as "Confidential" may be retroactively designated in the same manner and shall be treated appropriately from the date written notice of the designation is provided to the receiving party.

13. Nothing herein shall prevent disclosure beyond the terms of this order if the Party designating the information as "Confidential" consents to such disclosure or if the Court, after notice to all affected parties, orders such disclosure. Nor shall anything herein prevent any counsel of record from utilizing "Confidential" information in the examination or cross-

examination of any person who is indicated on the document as being an author, source or recipient, subject of or mentioned within the "Confidential" information, irrespective of which party produced such information.

In the event that any party to this litigation disagrees with the designation by the designating party of any information under Level Two or the designation of any person as a Qualified Person, the parties shall first try to resolve such dispute in good faith on an informal basis, such as production of redacted copies. If such dispute cannot be resolved, the objecting party may invoke this Protective Order by objecting in writing to the party who has designated the document or information as Level Two "Confidential Information" or designated the Person as Qualified. The parties may, by stipulation, provide for exceptions to this order and any party may seek an order of this Court modifying this Protective Order.

14. Unless otherwise agreed to in writing by the parties or ordered by the Court, all proceedings involving or relating to documents or any other information shall be subject to the provisions of this order.

15. In the event a receiving party wishes to use any "Confidential" information in any affidavits, briefs, memoranda of law, or other papers filed in Court in this litigation, such "Confidential" information used therein shall be filed with the Court in sealed envelopes on which shall be endorsed the title of the action, a brief description of the contents, the name of the Party, the Party's counsel, and a statement in bold print substantially in the following form: "THIS ENVELOPE CONTAINS DOCUMENTS WHICH ARE CONFIDENTIAL, AND IS NOT TO BE OPENED EXCEPT BY ORDER OF THE COURT." The provisions of this paragraph do not apply to exhibits offered at the time of trial; provided, however, that any Party shall be entitled to seek such protective orders concerning the "Confidential" to be introduced at

trial as it deems reasonable and/or necessary to protect "Confidential" information from public disclosure. No later than fourteen (14) days before the date of trial, a receiving Party shall advise a designating Party in writing of any "Confidential Information" it intends to use at trial so that the designating Party will have an opportunity to seek an appropriate protective order.

16. The Clerk of this Court is directed to maintain under seal all documents and transcripts of deposition testimony and answers to interrogatories, admissions and other pleadings filed under seal with the Court in this litigation which have been designated, in whole or in part, as "Confidential Information" by a party to this action.

17. Within one hundred twenty (120) days upon conclusion of this litigation and any appeal thereof, all confidential information, and all reproductions thereof, and all abstracts and compilations therefrom, in the possession of any of the persons qualified under Paragraph 7, shall be returned to counsel for the producing Party, except as this Court may otherwise order, or to the extent such information was used as evidence at the trial. As far as the provisions of any protective orders entered in this action restrict the communication and use of the documents produced hereunder, such orders shall continue to be binding after the conclusion of this litigation, except (a) there shall be no restriction on documents that are used as exhibits in court, unless such exhibits were filed under seal, and (b) a party may seek either the written permission of the producing party or order of the court with respect to dissolution or modification of such protective orders.

18. The inadvertent or unintentional production of documents containing, or other disclosure of, "Confidential" information, without being designated as "Confidential" information at the time of the production or disclosure, shall not be deemed a waiver in whole or in part of any Party's claim of confidentiality, either as to specific information discussed or as to

any information relating thereto or on the same or related subject matter. The production of documents or other tangible things pursuant to a request for production shall not be deemed a waiver of any right by the producing party to object to admissibility of such document at a later time. Documents unintentionally produced without designation as "Confidential" may be retroactively designated in the same manner and shall be treated appropriately from the date written notice of the designation is provided to the receiving party.

19. This Protective Order shall apply to and be enforceable against Plaintiff, Plaintiff's attorney, Defendant, Defendant's attorneys, all persons and entities to whom any confidential information is disclosed; and all of their agents, members, shareholders, partners, associates, consultants, employees, representatives, successors, and assigns.

20. Nothing contained in this protective order shall be construed as permitting disclosure of any confidential information, or any information abstracted therefrom, to counsel or parties in any actual or potential litigation or legal proceeding other than the above-entitled and numbered cause, or to any person or entity involved in the investigation or preparation of any other potential litigation or legal proceeding.

21. Nothing in this Order shall prevent any party from responding to a subpoena or other legal process compelling or requesting the production of information issued by a federal, state or other governmental agency conducting a legitimate or lawful investigation. However, prior to turning over any documents or information marked or designated "Confidential" under any level under this Order, the party receiving the subpoena, process or request from any governmental agency will notify the other party in sufficient time to permit the other party to respond or object to any subpoena, process or request from a governmental agency and no "Confidential" documentation or information will be produced until a final ruling or

determination has been entered on any objection to any governmental subpoena, process or request.

22. This Protective Order shall be without prejudice to the right of the parties to present a motion to the Court for a separate protective order as to any particular document or information, including restrictions differing from those as specified herein.

SO ORDERED this 24th day of January, 2011.

UNITED STATES ~~DISTRICT~~ JUDGE

AGREED:

John Bruster "Bruse" Loyd
Kathleen A. O'Connor
1300 Post Oak, Suite 830
Houston, Texas 77056
(713) 225-9000 – Telephone
(713) 225-6126 Facsimile

By: /s/ John Bruster Loyd
John Bruster Loyd
Texas Bar No. 24009032
S.D. Tex. No. 23240
Kathleen A. O'Connor
Texas Bar No. 00793468
S.D. Tex. No. 63644

ATTORNEYS FOR PLAINTIFF

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.
2700 Weston Centre
112 E. Pecan Street
San Antonio, Texas 78205
(210) 354-1300 – Telephone
(210) 277-2702 – Facsimile

By: /s/ Lawrence D. Smith
LAWRENCE D. SMITH
State Bar No. 18638800

ATTORNEYS FOR DEFENDANT
JP MORGAN CHASE BANK, N.A.

9584048